

43 Box 9 - [JGR/*Chadha* re: District of Columbia] (7) - Roberts, John
G.: Files SERIES I: Subject File

THE WHITE HOUSE

WASHINGTON

November 21, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *OK*

SUBJECT: Your Suggested Change in Clarke/Rolark
Letter

Attached are two versions of the Clarke/Rolark letter, one with the change you suggested (modified slightly for grammatical purposes) and one without. I recommend the version without your suggested change. Stating that the Justice letter was "revised after we had the benefit of your views" suggests (1) that we have already evaluated and responded fully to their concerns, which is inconsistent with the last paragraph of our letter, and (2) that we were deeply involved in drafting the letter, a view we want to dispel rather than discourage. *OK*

Attachments

THE WHITE HOUSE
WASHINGTON

November 21, 1983

Dear Mr. Clarke and Ms. Rolark:

Thank you for your letter of November 15, concerning a draft of a letter to Senator William V. Roth, Jr. from Assistant Attorney General Robert A. McConnell. That draft letter discussed H.R. 3932, a bill to amend the District of Columbia Self-Government and Governmental Reorganization Act to correct certain constitutional infirmities in the wake of the Supreme Court's recent decision in Immigration and Naturalization Service v. Chadha, 103 S.Ct. 2764 (1983). A letter from Assistant Attorney General McConnell concerning H.R. 3932 has now been sent, although with several changes from the draft you reviewed.

I have referred your letter to Assistant Attorney General McConnell for his consideration and direct reply. The Department of Justice is most directly involved in these issues and accordingly is in the best position to respond to your expressed concerns. Thank you for sharing those concerns with us.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

The Honorable David A. Clarke
The Honorable Wilhelmina J. Rolark
Council of the
District of Columbia
Washington, D.C. 20004

FFF:JGR:aea 11/21/83
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE
WASHINGTON

November 16, 1983

MEMORANDUM FOR ROBERT A. MCCONNELL
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGISLATIVE AFFAIRS

FROM: FRED F. FIELDING ^{Orig. signed by FFF}
COUNSEL TO THE PRESIDENT

SUBJECT: D.C. Chadha Correspondence

The attached letter from the D.C. Council Chairman and the Chairperson of the Council Judiciary Committee, together with a copy of my reply, is referred to you for your consideration and direct reply. I think it best to keep the debate on this matter, to the extent possible, between District officials and the Justice Department rather than District officials and the White House.

cc: Michael Horowitz
Counsel to the Director
Office of Management and Budget

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Ms. Wilhelmina J. Rolark
Council of the District of
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Washington, D.C. 20004

THE WHITE HOUSE

WASHINGTON

November 16, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *DSR*

SUBJECT: D.C. Chadha Correspondence

David Clarke, Chairman of the D.C. Council, and Wilhelmina Rolark, Chairperson of the Council's Committee on the Judiciary, have written you in response to the draft letter from Robert McConnell on H.R. 3932, the D.C. Chadha bill. As you know, OMB provided the Council with a copy of the draft for comment. The letter itself was sent out early this morning, with the changes we discussed yesterday.

The letter contends that our position entails "disastrous consequences" for Home Rule, and would impede the ability of the Council to enact appropriate criminal laws to protect the citizens of the District. The letter reviews actions of the Council with respect to criminal law, in an effort to mount an argument that our fears of laxness are unjustified. The letter also notes that Congress, unlike the Council, is likely to ignore local District criminal law problems.

Briefly, the answers: Our proposal does not have "disastrous consequences" for Home Rule. This bill is not, in the first place, a Home Rule bill at all but a bill to correct constitutional problems pointed out by Chadha. We support giving the Council plenary authority in every area except criminal law. Such an approach continues a distinction in current law permitting easier Congressional review of Council actions in the criminal law area.

As to what the Council has done in the criminal area, there is some good and some bad. Our U.S. Attorneys Office, however, which deals with these issues on a day-to-day basis, advised us that zany ideas have been blocked only because of the threat of Congressional veto. The U.S. Attorneys Office was horrified at the prospect of the Council legislating in this area without the check of effective Congressional control.

Finally, the Council can still act in this area. The fear that Congress will have to become intimately involved in the minutiae of local law is unfounded. All that the Council need do is obtain approval of its actions, which should be forthcoming for reasonable proposals.

I do not think you should send a substantive reply to Clark and Rolark. The letter they're concerned about was from McConnell; their reply should be directed to him. This approach will help keep the dispute between the District and Justice, rather than the District and the White House, to the extent that is possible in light of OMB's "leaks" to District officials. A brief reply noting you have referred the letter to Justice for consideration and response is attached. I have copied Horowitz to let him know we think the matter should be kept over at Justice.

Attachment

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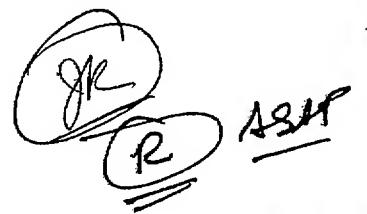
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cc: Michael Horowitz
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WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET


O - OUTGOING
 H - INTERNAL
 I - INCOMING
 Date Correspondence Received (YY/MM/DD) 1/7

Name of Correspondent: David A. Clarke / Wilhelmina Rolask

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Support of DC Home Rule

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Date Code YY/MM/DD
<u>ORIGINATOR</u>		ORIGINATOR	<u>83/11/16</u>		
<u>ORIGINATOR</u>		Referral Note:	<u>83/11/16</u>		<u>5/83/11/16</u>
		Referral Note:			
		Referral Note:			
		Referral Note:			
		Referral Note:			

ACTION CODES:

A - Appropriate Action
 C - Comment/Recommendation
 D - Draft Response
 F - Furnish Fact Sheet
 To be used as Enclosure

I - Info/Copy Only/No Action Necessary
 R - Direct Reply w/Copy
 S - For Signature
 X - Interim Reply

DISPOSITION CODES:

A - Answered
 B - Non-Special Referral
 C - Completed
 S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments:

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C., December 5, 1978.

Mr. DAVID A. CLARKE, Esq.,
Chairman, Counsel on Judiciary, District of Columbia City Council,
Washington, D.C.

DEAR MR. CLARKE: The accompanying report contains the joint recommendations of the House District Subcommittee on Judiciary and the Senate Subcommittee on Governmental Efficiency and the District of Columbia regarding the Law Revision Commission's proposed Basic Criminal Code.

This joint report highlights the major deficiencies and problem areas in the Commission's code proposals, and suggests methods or alternatives for correcting them. In some instances, the report comments on certain minor or nonsubstantive technical problems which need to be addressed in order to make the LRC proposals a more workable and less ambiguous code.

Each subcommittee has independently completed an extensive and thorough review and analysis of the hearings, statements, and proposals compiled as a result of subcommittee considerations of the Commission's proposed Basic Criminal Code. The joint report sets forth recommendations, changes and amendments to the LRC proposals which both Subcommittees have identified as being in need of revision. There are numerous other issues on which the subcommittees will comment separately at a later date.

The revision of the District of Columbia Criminal Code has been a tedious and careful process and has resulted in a voluminous and detailed work product by the Law Revision Commission and the House and Senate subcommittees. Their combined efforts have culminated in a comprehensive and modern set of criminal laws for the District of Columbia.

The present criminal law of the District of Columbia is an outdated relic of mosaic statutes, cases, and administrative interpretations passed into law, in a piecemeal fashion, over a period of time that stretches from 1901 to the present. Time has changed the social mores and standards by which we live today. The criminal laws of the District have not kept pace with that change. With the proposals made by the Law Revision Commission and the extensive hearings record and recommendations from the subcommittees, the City Council will stand in the unique position of being able to begin the modernization process without further delay.

In the spirit of home rule, we are delighted to begin the process of transferring jurisdiction of the proposed criminal code to the City

Council so that they can complete the task of codification by adding the essential ingredient of their knowledge of the District of Columbia. We look forward to continued oversight, communication and exchange between Congress and the Council relative to the code, and to rapid progress towards completion of the task that we have begun.

Respectfully submitted,

THOMAS F. EAGLETON,

Chairman, Senate Subcommittee on Governmental Efficiency.

ROMANO L. MAZZOLI,

Chairman, House Subcommittee on Judiciary.

DISTRICT COLUMBIA LAWYER

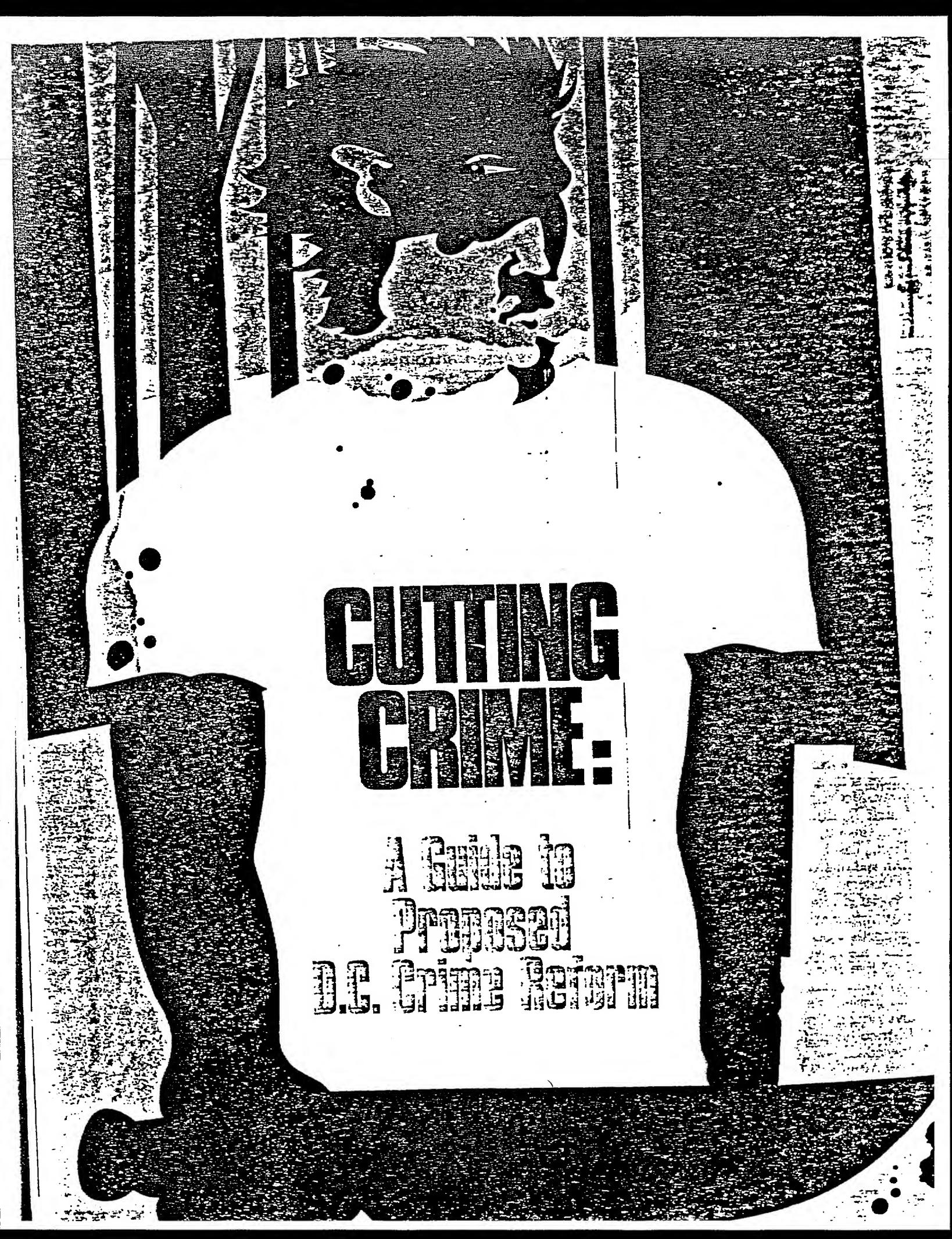
DISCUSSION ARTICLE A Guide to Proposed Reforms

THE OFFICIAL JOURNAL OF THE
DISTRICT OF COLUMBIA BAR
SEPTEMBER-OCTOBER 1981
VOL. 6, NO. 1

A H 7d
MS ANNIE M PEISTER
1303 MAJESTIC STREET NW
WASHINGTON, DC 20011

964643

THE BALLOT BOX AND THE SUPREME COURT
THE BAR'S RESPONSE TO LAWYER ALCOHOLISM



CUTTING CRIME:

**A Guide to
Proposed
D.C. Crime Reform**

BY DAVID A. CLARKE AND
ANNE MEISTER

of crime; lawbreaking is not unrelated to problems in housing, education, recreational resources or unemployment.

A contribution can be made by legislative reforms, provided the reforms are reasoned and address the aspects of the crime problem that can be remedied, in part, by changes in the language of the law. Reforms also must be designed to meet evolving community concerns and community values. To quote Roscoe Pound: "The law must be stable, but it must not stand still."

This article discusses the history of local criminal law reform, the legislative process for such reforms, and the measures introduced before the Council of the District of Columbia to make reforms in the District's criminal laws.

make recommendations for reform of the local laws. Specifically, the commission was required to:

... give special consideration to the examination of the common law and statutes relating to the criminal law in the District of Columbia, and all relevant judicial decisions, for the purpose of discovering defects and anachronisms in the law relating to the criminal law in the District of Columbia and recommending needed reforms.

This task was tremendous because the commission faced a body of criminal law that had not been comprehensively reviewed or revised since 1901. In 1975, the commission received partial funding, and in 1976 the two-year ban on Council action in this area was extended for an additional two years.

The commission focused its attention on criminal law reform and developed final recommendations for a revised "basic" criminal code for the District of Columbia by March 1978. These recommendations were characterized as a "basic" criminal code since the recommendations proposed made revisions in laws treating traditional crimes against persons and property, such as murder, rape, robbery, theft and arson, but did not address so-called crimes against society, such as prostitution, gambling and drug offenses. In the areas considered, the commission recommended sweeping changes in the substantive law and provided a presumptive sentencing model for these sentences it proposed to recodify, leaving the existing indeterminate sentencing model for the remaining offenses.

Congress held a series of hearings on these recommendations, but ultimately determined to allow the council to complete the task. As a result of this transfer, the Criminal Code Project was created as a special unit of the D.C. Committee on the Judiciary, designed to assist in the committee's review of criminal law legislation. Following this transfer of authority, the commission's recommendations were introduced as the starting point for local debate on these issues. The Committee on the Judiciary scheduled an unprecedented series of eight public hearings on the proposal.

At the hearings little testimony was presented that expressed overall support of the commission's recommendations, apart from that presented by the commission itself. Opponents of the

History of Local Criminal Law Reform

Like many aspects of this city's history, the history of local criminal law reform in the District of Columbia is unusual. Even with the establishment of a limited home rule government in 1973, Congress reserved exclusive jurisdiction over revisions to the criminal law titles of the District of Columbia Code. It was not until 1979 that primary legislative jurisdiction over the local criminal laws was transferred to the Council of the District of Columbia, as the locally elected legislative body.

When Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act to provide for an elected local government, the newly created government was prohibited from enacting legislation in a number of important areas (D.C. Code, sec. 1-147(a)(9)(Supp. V 1978)). Included in the restrictions was a two-year ban upon Council enactment of any legislation with respect to title 22 of the District of Columbia Code, relating to crimes; title 23, relating to criminal procedure; and title 24, relating to prisoners and their treatment. During the period between the 1973 passage of the Home Rule Act and the scheduled expiration of this limitation on the new government's power, Congress enacted the District of Columbia Law Revision Commission Act (D.C. Code, sec. 49-401 to 403 (Supp. V 1978)). This act created a prestigious advisory commission, with members appointed by a variety of federal and local sources, to examine and

Crime is an issue that touches all of us. In the District of Columbia, as in many urban jurisdictions, the problem of crime is a reality of everyday life and fear of crime has reached alarming proportions. In response to this rising concern about crime, the D.C. City Council has given serious consideration to many suggested reforms to our local criminal laws. Proposals have been introduced to make changes in the District's laws that deal with drugs, sexual assault, prostitution, theft, white-collar crime, and sentencing, among others. Yet none of the suggested reforms, either alone or in combination, offers a complete solution to the problem. There is no single solution because there is no one cause

Councilmember David A. Clarke, who represents Ward 1, is Chairperson of the Committee on the Judiciary of the Council of the District of Columbia. Anne Meister is the former Director of the Criminal Code Project.

commission's proposal included the U.S. Attorney for the District of Columbia, the executive branch of the D.C. government, the Board of Judges and the Advisory Committee on Criminal Rules of the D.C. Superior Court.

Opposition to the proposal centered around four major concerns: (1) the practical obstacles of operating a dual system in which some, but not all, criminal offenses were recodified; (2) the difficulty of understanding and applying the new terminology used in the proposal, especially the new, uniform state of mind definitions used; (3) the relative benefit of the proposed revision when weighed against the costs of its implementation; and (4) the potential cost of the proposal, estimated at \$132.6 million in added capital and operating costs during the first five years.

In June 1980, the Committee on the Judiciary issued an interim report on criminal law reform in which the committee determined not to enact the Law Revision Commission's proposal. Rather, the committee decided to direct its resources toward the development of legislation in areas specifically identified during the course of the hearings as posing special problems to or of particular interest to the community. Some of these areas were included in the commission's proposal and some were not.

Consequently, the committee set as priority reform of local laws, such as drug laws and white-collar laws, which do not provide an adequate basis for local law enforcement in the event of a transfer to District officials of prosecution authority. The committee also set as priority the consideration of matters that were identified during the course of the hearings as areas of pressing community concern, such as reform of the sexual assault laws, drug laws, penalties for weapons offenses, bail laws and problems raised by juvenile crime. Over the next several months, the work of the Criminal Code Project concentrated on drafting proposed legislation in many of these areas.

This year, eleven bills have been introduced to reform criminal law in the District of Columbia. These bills became the subject of another series of public hearings on criminal law reform held by the Committee on the Judiciary on March 12 and 13, 1981. Just prior to these hearings, a twelfth criminal law reform bill was introduced and an additional hearing on this bill was

held on June 2, 1981. As described in the following section, these bills are at various stages of the local legislative process.

Legislative Process For Local Criminal Law Reform

The legislative process for local criminal law reform is somewhat unusual. Congressional review of acts to amend the criminal law titles of the District of Columbia Code, titles 22, 23 and 24, differs from the review accorded to other legislative measures. In all other respects, the legislative process is the same.

Once a bill has been introduced and referred to one of the nine standing committees of the Council, (criminal law legislation is referred to the Committee on the Judiciary), a public hearing may be scheduled. Notices of all public hearings are published in the D.C. Register at least fifteen days in advance of the date of the hearing.

The chairperson of the committee is generally responsible for setting the agenda of that committee. If the committee takes no action on a bill, the bill dies at the expiration of the Council period. If a bill is placed on the agenda of the committee, following staff research and review of the comments received, the committee members meet to mark up the bill. At mark-up, amendments may be made by the committee members and a formal vote is taken to approve or disapprove the measure. If approved, the final version of the committee action on the bill is called the committee print and this committee print, along with a report detailing the purpose and impact of the bill, is sent to the full Council for review.

The Council passes a bill (as opposed to an emergency act, a budget request act or a resolution) by voting twice to approve the measure in substantially the same form. Once passed, the bill is sent to the Mayor, who may approve or veto the measure. If vetoed by the Mayor, the measure still may be enacted by a two-thirds majority vote of the Council. Once a bill has been approved by the Mayor or the Mayor's veto has been overridden, the bill becomes an act and is sent to Congress for review.

Generally, Congress may disapprove an act only by passing a joint dis-

approval resolution. However, acts that seek to amend the criminal law titles of the District of Columbia Code are subject to disapproval by either house of Congress. If an act is not disapproved within thirty legislative days (not calendar days), it becomes law.

An alternative procedure for the enactment of legislation is the initiative process, by which proposed legislation is submitted to District voters in summary form as an initiative measure. If approved by a majority of the registered, qualified electors voting on the measure, the initiative is sent to Congress for review.

The twelve criminal law reform proposals that will be discussed in this article are at various stages of the local legislative process. One of these proposals, the D.C. Uniform Controlled Substances Act of 1981, recently became law. Another, the D.C. Sexual Assault Reform Act of 1981, is undergoing congressional review and may have become law by the date of this publication. A third proposal, the D.C. Bail Amendment Act of 1981, was disapproved by the Committee on the Judiciary, but the Control of Prostitution and Sale of Drugs in Public Places Criminal Control Act of 1981 was approved and is awaiting review by the full Council. The remaining proposals are pending action by the Committee on the Judiciary.

Drug Reform

The *District of Columbia Uniform Controlled Substances Act of 1981* became law on August 5, 1981. Patterned after the model developed by the National Conference of Commissioners on Uniform States Laws and, to a certain extent, the current federal law, this legislation makes sweeping reforms in the local drug laws. Prior District law in this area consisted primarily of the 1938 Uniform Narcotics Drug Act, D.C. Code, sec. 33-401 to 425, and the 1956 Dangerous Drug Act for the District of Columbia, D.C. Code, sec. 33-701 to 712. These prior laws lacked clarity in defining those substances placed under control and penalized all first-time drug offenses as misdemeanors, regardless of the substance involved, the type of conduct engaged in and the parties to the illegal transaction. In addition, these prior laws did not address adequately the diversion of drugs into illicit chan-

nels and used a cumbersome and time-consuming method for updating the list of substances subject to control. As a result of these inadequacies, major drug cases in the District of Columbia generally were prosecuted by the U. S. Attorney in the federal court system, rather than in the D.C. Superior Court. Consequently, the local preventive detention laws were not applicable to these cases.

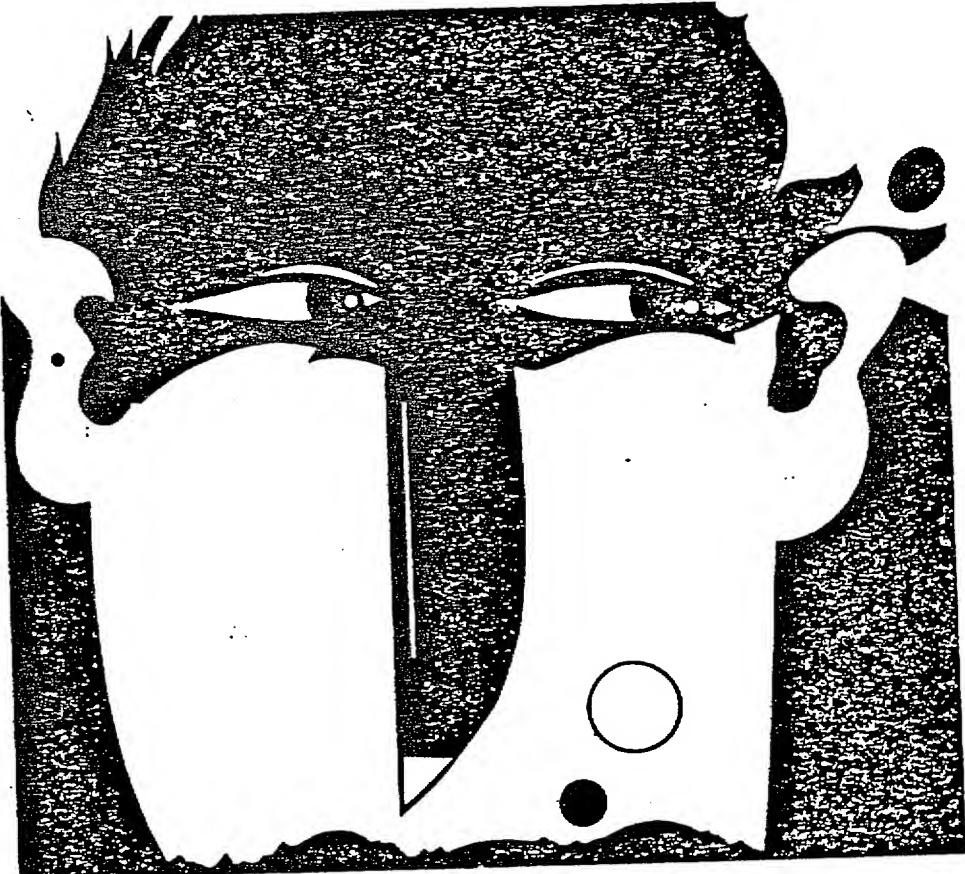
In contrast, the District of Columbia Uniform Controlled Substances Act of 1981 creates a comprehensive system governing the use of controlled substances in the District. It clearly identifies those substances subject to control and significantly expands the coverage of the law by controlling all substances, excluding alcohol and tobacco, with a known potential for abuse. Depending upon factors such as the degree of abuse potential, the known effect, harmfulness and level of accepted medical use, each controlled substance is placed into one of five schedules. The highest schedule, Schedule I, contains substances that have a high potential for abuse and no accepted or safe medical use in treatment. The remaining schedules, II through V, control substances that have an accepted medical use but, in varying degrees, a lesser potential for abuse and for physical or psychic effects on users. The new drug law also creates an administrative system for scheduling new substances and rescheduling those substances already subject to control. The use of an administrative system, rather than the regular legislative process, is designed to enable the District government to react promptly to the introduction of new drugs and to changes in the known abuse potential of existing substances.

Penalties under the new drug law, which are generally much higher than those provided under the prior local laws, vary according to the gravity of the offense committed and the schedule of the substance involved. While simple possession for one's own use continues to be sanctioned as a misdemeanor offense, penalties for the manufacture, distribution, or possession with intent to manufacture or distribute range from up to one year imprisonment and a \$10,000 fine for schedule V substances, to up to fifteen years imprisonment and a \$100,000 fine for schedule I or II narcotics. Special penalties are provided for repeat offenders that double the maximum fine and

term of imprisonment that may be imposed. Special penalties also are provided for persons who are twenty-one years of age or older who distribute controlled substances to a minor or enlist the assistance of a minor to sell or distribute controlled substances for the benefit of the adult. Paralleling the provisions of the current federal law, the new local drug law also penalizes persons who attempt or conspire to commit a controlled substances offense and permits conditional discharge of first offenders found guilty of simple possession for personal use.

The District of Columbia Uniform Controlled Substances Act of 1981 also

controls. These provisions will serve to identify those persons in the District of Columbia who have legitimate access to controlled substances and to document the movement of controlled substances in the District. Other administrative reforms include a substantial expansion of the forfeiture powers of the District of Columbia, delineation of more specific standards for the issuance and implementation of administrative search warrants, and a provision for the admissibility of chemist reports without a personal appearance by the chemist if the results of the analysis are not in dispute. Finally, the new drug law authorizes the Mayor to



creates a new, closed regulatory system for the legitimate handling of controlled substances, in order to control better the diversion of these substances to illicit sources. This regulatory system requires registration of all persons who wish to dispense, distribute, manufacture or conduct research with controlled substances in the District of Columbia; sets requirements related to the recordkeeping, inventories, order forms and prescriptions of registrants; restricts the distribution and dispensing of controlled substances by registrants; and imposes separate penalties for offenses committed in violation of these regulatory

develop a series of educational programs for adult and juvenile violators about the dangers of drug use and abuse.

Sexual Assault Reform

The *District of Columbia Sexual Assault Reform Act of 1981* was enacted by the Council on July 14, 1981, signed by the Mayor on July 21, 1981, and currently is undergoing congressional review. Patterned after the proposal developed by the D.C. Law Revision Commission on sexual assault offenses, this legislation seeks to con-



solidate and modernize local law in this area. Key provisions of this act would:

- (1) eliminate all gender-based references in sexual assault crimes;
- (2) increase the protections afforded to children who are wards by expanding the existing prohibition against sexual activity by blood relations to apply also to adoptive parents, stepparents, certain relatives related by marriage, and other persons who live in the same household and who misuse their supervisory or disciplinary control to cause the sexual act;
- (3) impose special prohibitions against sexual activity with inmates or patients;
- (4) eliminate the current spousal exemption for the most serious types of sexual assault; and
- (5) eliminate criminal prohibitions against private, noncommercial, consensual sexual activity between adults, except for conduct that violates the current incest law.

Due to misleading coverage by the local press that characterized the measure as a bill to legalize teenage sex, the debate over this act focused on changes to the current statutory rape law. The current statutory rape law in the District of Columbia prohibits a male of any age from engaging in sexual activity with a female under the age of sixteen. While this law protects females, it does not protect young males, although the Children's Hospital Child Protection Unit reports that more than 25 percent of the sexually abused children it handles are male.

As originally proposed, the District of Columbia Sexual Assault Reform Act of 1981 would have replaced this gender-based classification with a classification based upon age differences between the two parties, patterning the law after a model used, in part, in thirty-four jurisdictions and recommended by the D.C. Law Revision Commission. The prohibitions against sexual activity with an older or younger child contained in the bill would apply even if the sexual activity were consensual, unless the parties were married to one another. Sexual acts compelled by the use of force or threats would be punishable as sexual assault in the first degree, regardless of the age of the victim.

Concern over the mistaken public perception of the bill's provisions led the Council to delete this provision from the bill and substitute a gender-neutral version of the current statutory rape law. As a result, this act, as amended, would impose a penalty of up to twenty years' imprisonment upon any person who engages in sexual activity with a child under the age of sixteen.

Control of Prostitution and Sale of Drugs

The *Control of Prostitution and Sale of Dangerous Drugs in Public Places Criminal Control Act of 1981* was approved by the Committee on the Judiciary at its July 22, 1981 meeting.

As amended in committee, this bill would revise the solicitation for the purposes of prostitution statute, D.C. Code, Sec. 22-2701, by raising the fine from \$250 to \$300, and by clarifying that the prohibition against soliciting acts of prostitution includes the specific, enumerated acts contained in the bill when engaged in for the purpose of prostitution. This bill also would revise the peddling of drugs on streets statute, D.C. Code, sec. 2-617, to clarify that these same specific enumerated acts, when engaged in for the purpose of selling controlled substances, are included in the prohibition against offering for sale by peddling. The specific acts are described in the bill as follows: "remaining or wandering about a public place and repeatedly beckoning to, or repeatedly stopping, or repeatedly attempting to stop, or repeatedly attempting to engage passers-by in conversation, or repeatedly stopping or attempting to stop motor vehicles, or repeatedly interfering with the free passage of other persons."

Theft and White-Collar Crimes

The *Theft and White-Collar Crime Act of 1981* is another major piece of proposed legislation. This bill contains numerous reforms to the laws of theft, fraud, bribery, perjury, blackmail, extortion, obstruction of justice and forgery. Earmarked during the criminal law reform hearings as an area of District law that has hampered effective law enforcement efforts on the local level,¹ this bill is designed to remedy specific deficiencies in the law rather than to serve as a comprehensive revision. The bill would eliminate artificial distinctions between the various forms of theft by consolidating larceny offenses, false pretenses, embezzlement and receiving stolen property into a single theft offense. It also would permit the values of items stolen as part of a common scheme or plan to be aggregated for the purpose of being prosecuted as a felony rather than as multiple misdemeanors and would provide an enhanced penalty for those who steal from a senior citizen.

In order to provide more effective tools for combating consumer fraud, the law of false pretenses would be changed to cover attempted false pretenses and promises of future perform-

ance made without intent to perform. Perjury also would be redefined so as to include false statements made under penalty of perjury but not under oath. The current obstruction of justice statute would be expanded to prohibit obstructions other than those accomplished by means of an overt threat or the use of force.

Another major feature of the bill would be the development of a number of new statutory offenses, including:

- (1) a statute prohibiting the taking or offering of an unlawful gratuity;
- (2) a statute prohibiting payoffs for past official behavior;
- (3) a statute prohibiting trafficking in stolen property;
- (4) fraud statutes that create two degrees of fraud and prohibit schemes to defraud;
- (5) a shoplifting statute;
- (6) a commercial piracy statute that prohibits thefts of recordings and other commercial property;
- (7) a forgery of objects statute; and
- (8) a credit card fraud statute.

The bill also would repeal the current criminal statutes regarding criminal libel, mislabeling potatoes and kosher meats, and procuring the enlistment of criminals.

Criminal Statute of Limitations

The *District of Columbia Criminal Statute of Limitations Act of 1981* is expected to be marked up by the Committee on the Judiciary this fall. The bill would, for the first time, create a local statute of limitations for criminal offenses. At present, the District of Columbia relies upon the applicable federal law. This federal law sets no time limitation on prosecutions for capital crimes and a five-year limitation on prosecutions for other criminal offenses.³

In general, the limitations that would be imposed by the bill differ from the current federal law by providing for no time limitation on prosecutions for first degree murder, by setting a ten-year time limitation on prosecutions for second degree murder, by extending the time limitation for felony prosecutions to six years, by restricting the time limitation for misdemeanor prosecutions to three years, and by creating special, extended time limitations for prosecutions based on fraud, breach of

a fiduciary trust and misuse of public office. Many of these provisions stem from the recommendations of the D.C. Law Revision Commission.

The need to develop a local criminal statute of limitation was supported during the criminal law reform hearings in particular due to the elimination of all capital crimes⁴ in the District of Columbia. One major amendment suggested by the U.S. Attorney for the District of Columbia that is currently being considered would impose no time limitation on all prosecutions for murder, including murder in the second degree.

Sentencing Improvements

The *District of Columbia Sentencing Improvements Act of 1981*, also expected to be marked up by the Committee on the Judiciary this fall, would make certain, discrete changes in local sentencing procedures. The most important change suggested by this bill would restore split sentencing as a sentencing option. Split sentencing is a sentence in which a judge orders the defendant to serve a set period of imprisonment followed by a set period of probation. Split sentencing by local judges was prohibited in 1979 by a court decision based on an interpretation of the current statutory law.⁵ As a consequence, judges now are forced to choose between incarceration and probation in sentencing. The language of the bill also would promote sentencing flexibility by permitting a judge to suspend the imposition, as well as the execution, of a sentence.

The pending sentencing bill would limit all sentences of probation to five years or less, and would provide that a defendant may not be placed on probation without his or her consent. This five-year limit on probation sentences would codify local sentencing practice.

Another provision of the bill would require the court to notify aliens of the potential, collateral consequences of a guilty plea by giving the following advisement on the record:

If you are not a citizen of the United States, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion for admission to the United States, or denial of naturalization pursuant to the laws of the United States.

Any alien who was not notified properly, and who could show that his or her conviction might have these collateral consequences, would be entitled under the bill to withdraw the guilty plea and enter a plea of not guilty.

In an attempt to promote the use of restitution, reparations and community service, the bill also contains a general provision that statutorily would authorize the court to order these remedies in addition to any other condition of the sentence imposed or as a condition of probation. This provision was developed in response to community comments during the criminal law reform hearings, and would serve as a legislative endorsement for the increased use of these sentencing options in appropriate criminal cases.

Last, the bill as introduced would establish standard rules for the making and disclosure of presentence reports. However, since the language of the bill merely codifies the current court rules, these provisions probably will be deleted at the time of committee mark-up.

Mandatory Sentencing

Three mandatory sentencing bills now are pending before the Committee on the Judiciary. The first, the *Added Punishment for Crimes Committed With A Dangerous Weapon Act of 1981*, would impose a five-year mandatory minimum sentence upon those convicted, for the first time, of committing a "crime of violence" while "armed," and would increase to ten years the current five-year mandatory sentence for repeat offenders. This bill would not change the current statutory definition of a "crime of violence," which includes not only offenses such as murder, rape, kidnapping and robbery, but also such crimes as larceny and housebreaking. The bill also would not amend the current reference to "armed" offenses as offenses committed "while armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon. . . ."⁶ Consequently, the offenses that would be covered by these mandatory minimum sentences range from murder by use of a sawed-off shotgun to shoplifting a knife. Under this bill, offenders would be denied probation, sentencing under the Federal Youth Corrections Act or the possibility of parole prior to the

expiration of their minimum sentence.

A similar piece of proposed legislation also would impose a five-year mandatory minimum sentence on first offenders convicted of committing a "crime of violence" while "armed," and a ten-year mandatory minimum sentence on repeat offenders. However, the bill, the *1981 Amendment to Section 22-3202 of the District of Columbia Code*, would limit the application of these mandatory minimum sentences to a "crime of violence" in which a firearm, pistol or imitation firearm or pistol was used or was readily available. The bill also differs in that it would not bar application of the Federal Youth Corrections Act to first offenders.

The third mandatory minimum sentencing bill pending before the Committee on the Judiciary, entitled the *Mandatory and Increased Penalty for Offenses Committed During Release Act of 1981*, would impose a five-year mandatory minimum sentence on persons convicted of committing a felony offense while on pretrial release. The bill also would impose a one-year mandatory minimum sentence on persons convicted of committing a misdemeanor offense while on pretrial release. Under the bill, a prison term must be imposed since judges would be precluded from granting probation or suspending sentence for these mandatory minimum sentences. These mandatory sentences would have to be served consecutive to any other sentence imposed and would apply even if the original charge, for which the offender was placed on pretrial release, was dismissed.

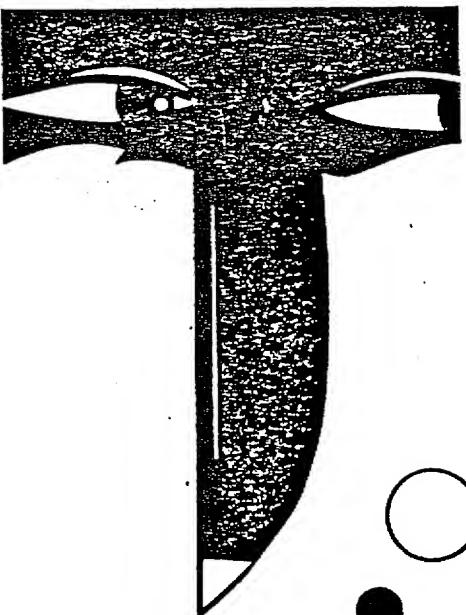
During the criminal law reform hearings held this year, concerns were raised by the U.S. Attorney for the District of Columbia, the D.C. Department of Corrections and the D.C. Board of Parole, and many community groups that regard the value of mandatory sentences in general. Written comments by Division V of the D.C. Bar, which opposed enactment, pointed out the practical difficulties that mandatory minimum sentences can create:

... Judges would be deprived of discretion to tailor sentences to fit the crime and the background of the defendant. Prosecutors would gain some leverage in plea bargaining, but would be faced with the dilemma of either forcing a defendant to go to trial by refusing to make a plea offer to an unarmed count or making a disproportionately lenient offer. Innocent defendants would

be pressured to plead to lesser unarmed counts. Courts would be crowded with trials in which there was overwhelming evidence of guilt but the defendant could not afford to accept a plea to an armed count. Prisons would be crowded with those serving fixed sentences. Parole authorities would be deprived of discretion to evaluate the suitability of a prisoner for parole during the mandatory minimum term.

Supporters of mandatory minimum sentencing, such as the Metropolitan Police Department, advocated the use of sterner sanctions and the need for consistency of sentences for like offenses and like offenders. Other supporters pointed out the possible deterrent effect of these sentences.

A preliminary test of Council sentiment toward mandatory minimum sentences arose during the floor debate on the District of Columbia Uniform Controlled Substances Act of 1981. At that time, one councilmember presented a



number of amendments, some of which would have imposed mandatory minimum sentences for the manufacture, distribution, or possession with intent to manufacture or distribute, certain controlled substances. After the Council's general counsel opined that the amendments were sufficiently broad as to provide a mandatory minimum sentence for simple transfer by one person to another of a controlled substance, such as a sleeping pill, the Council defeated the proposed amendment by a vote of ten to three.

Recently, a councilmember has filed with the Board of Elections and Ethics a proposed voter initiative. This initiative essentially would enact his propos-

als for imposing mandatory minimum sentences on persons who commit a "crime of violence" while armed with a pistol or firearm or who manufacture, distribute, or possess with intent to manufacture or distribute, certain controlled substances. The Board of Elections and Ethics has approved this proposed initiative for circulation. If the initiative survives any challenges, and if 5 percent of the registered voters sign petitions demanding that the matter be placed on the ballot, then this initiative measure will be voted on in the forthcoming election.

Other Crime Related Legislation

The *Drug Paraphernalia Act of 1981* would prohibit the use of, or possession with intent to use, drug paraphernalia. It also would prohibit the sale or manufacture of such paraphernalia under circumstances in which the seller knows or has reason to know that the paraphernalia will be used in violation of the provisions of the bill and impose a special penalty upon adults who deliver drug paraphernalia to certain minors.

Unlike the drug paraphernalia provision contained in the new drug law, this bill would define the term "drug paraphernalia" broadly. During the course of the criminal law reform hearings, serious concerns were raised regarding the constitutionality of this proposed bill, which follows the model drafted by the federal Drug Enforcement Administration. This model has been under attack in both state and federal courts throughout the country and judicial decisions have split over the constitutional issues raised. Until such time as these issues are finally determined by the courts, the committee is expected to delay consideration of this bill.

The *1981 Amendment to Section 6-1876 of the District of Columbia Health and Safety Code* would make changes in the penalties imposed for violations of the local gun control law. However, this bill is drafted to amend the lesser penalties contained in the gun control law when it was originally enacted in 1976, rather than as later amended by the Council.

By a vote of three to one, the Committee on the Judiciary voted to disapprove the *District of Columbia Bail*

Bill No.	Act No.	Law No.	Short Title	Sponsors
4-5	—	—	Local Penitentiary Act of 1981	Moore
4-108	—	—	Added Punishment for Crimes Committed With A Dangerous Weapon Act of 1981	Kau
4-119	—	—	1981 Amendment to Section 6-1876 of the District of Columbia Health and Safety Code	Ray Shackleton
4-111	—	—	1981 Amendment to Section 22-3202 of the District of Columbia Criminal Code	Ray
4-120	—	—	District of Columbia Sentencing Improvement Act of 1981	Clarke Rolark Shackleton
4-121	—	—	District of Columbia Statute of Limitations Act of 1981	Clarke Rolark Shackleton
4-122	4-69	—	District of Columbia Sexual Assault Reform Act of 1981	Clarke Rolark Shackleton
4-123	4-51	4-29	District of Columbia Uniform Controlled Substances Act of 1981	Clarke Rolark Shackleton Wilson
4-125	—	—	Mandatory and Increased Penalty for Offenses Committed During Release Act of 1981	Winter
4-127	—	—	District of Columbia Bail Amendment Act of 1981	Clarke
4-133	—	—	District of Columbia Theft and White-Collar Crimes Act of 1981	Clarke
4-184	—	—	Control of Prostitution and Sale of Dangerous Drugs in Public Places Criminal Control Act of 1981	Wilson

Copies of this legislation may be obtained, free of charge, from the Legislative Services Unit of the Council of the District of Columbia by phoning 724-8050, or by writing to Room 28, District Building, Washington, D.C. 20004.

Amendment Act of 1981 at its July 22, 1981 meeting. This attempt to amend the District's release and pretrial detention laws failed, in part, because of concerns about the effectiveness and potential fiscal impact of the proposed changes. As presented to the committee, the bill would have:

- (1) increased the maximum time of detention, under the preventive detention laws from sixty to ninety days for good cause shown;
- (2) increased the holding period for detaining persons arrested while on federal or out-of-state probation or parole from five to ten days; and
- (3) authorized the pretrial detention,

without bond, of a person charged with first degree murder who poses a risk of flight or danger to the community.

A Look Ahead

As past experience has demonstrated amply, on both a national and state-by-state basis, reform of criminal law is a lengthy process. The proposals passed by and pending before the Committee on the Judiciary consist of partial reforms dealing with distinct and separate areas of criminal law and addressing the more pressing local crime problems. In the upcoming

months, the committee will undertake a final review of the pending proposals, based upon comments received during and after the criminal law reform hearings. In addition, the committee plans to review proposed legislation on related criminal law issues, such as a proposal to provide immunity to insurers who report suspected cases of arson to the local authorities and a proposal to provide compensation to victims of crime. A more long-range goal of the Committee on the Judiciary and its staff is preparing new legislative proposals to continue its work toward comprehensive review of the local criminal law.

Criminal law reform is not a static process; it responds to new developments in local crime problems and it depends upon the input of concerned citizens. The D.C. Bar already has contributed to this process through its representation on the D.C. Law Revision Commission, through the written comments submitted by Division V and through the insights shared by its individual members.

Now an even greater challenge exists for the Bar and its members as the city faces the first ballot initiative in the criminal law area. During the future debate, the Bar is the one element of our community most able to help the community-at-large understand the content and the potential impact of the proposed initiative.

¹ D.C. Code § 49-402(a) (Supp. V 1978).

² Statement of Executive Branch Agencies on the Bills to Expand and Amend the D.C. Criminal Code Presented to the Committee on the Judiciary, Council of the District of Columbia (March 12, 1981).

³ 18 U.S.C. § 3282 (1976). This general statute of limitation applies except as otherwise expressly provided by law.

⁴ See Whalen v. United States, 445 U.S. 684, 686 n. 2 (1980); Furman v. Georgia, 408 U.S. 238 (1972); United States v. Lee, 489 F.2d 1242, 1247 (D.C. Cir. 1973).

⁵ Davis v. United States, 397 A.2d 951 (D.C. 1979).

⁶ D.C. Code § 22-3202 (1973). Other dangerous or deadly include but are not limited to "a sawed-off shotgun, shotgun, machine-gun, rifle; dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, or metallic or other false knuckles."

⁷ Report of the Criminal Justice Administration Committee of the Division of the District of Columbia Bar on the 1981 "Anti-Crime" Legislation (April 29, 1981) 1.



U.S. Department of Justice

Office of Legislative Affairs

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

M E M O R A N D U M

November 21, 1983

TO: Richard A. Hauser
Deputy Counsel to the President
The White House

FROM: Michael W. Dolan
Deputy Assistant Attorney General
Office of Legislative Affairs

SUBJECT: Legislation Affecting Federal Interest in the District
of Columbia.

The following new item should be added to my memorandum of November 14th:

7. U.S. Attorney Use of Employment Security Building. The Department continues to oppose H.R. 3707, a bill to transfer the Employment Security Building to the District of Columbia. As the attached correspondence indicates, the building is needed for the relocation of the offices of the United States Attorney for the District of Columbia.

cc: Joseph diGenova, U.S. Attorneys Office, D.C.
Jay Stephens, Associate Attorney General's Office
✓John Roberts, White House Counsel's office
Harold Koh, Office of Legal Counsel



Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable David A. Stockman
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

This is in response to a request from your staff for the views of the Department of Justice on the Pennsylvania Avenue Development Corporation (PADC) comments on H.R. 3707, a bill "To convey the District of Columbia Employment Security Building to the District of Columbia and to provide for the payment of a note entered into to finance the construction of such building." The Department of Justice opposes this legislation, as I expressed in my letter to Congressman Walter E. Fauntroy, which was transmitted to the Office of Management and Budget for clearance on November 1, 1983. In its views on H.R. 3707, the PADC takes no firm stance either for or against the legislation, but suggests an amendment to empower a cost-free transfer of the Employment Security Building and its underlying land, should passage of the bill result in ownership by the District of Columbia. The Department of Justice is opposed to such an amendment, and wishes to reiterate its position that the interests of the Federal Government would be best served if the subject building and land were occupied by the Department of Justice, U.S. Attorney's Office for the District of Columbia. Instead of an amendment to H.R. 3707, the Department of Justice recommends against the enactment of this bill.

As stated in my letter to Congressman Fauntroy, the U.S. Attorney's Office occupies space in the U.S. Courthouse and the District of Columbia Courthouse. However, the allocation of space in both courthouses is controlled by the Chief Judges of their respective courts. The Attorney General has been notified by the Chief Judges that the U.S. Attorney's Office must relocate from the courthouses to make room for expansion by the courts (Enclosure). It is the wish of the Chief Judges and it is a necessity for continued efficient operation of the U.S. Attorney's Office that the new location for the U.S. Attorney be near both courthouses.

The Employment Security Building is the only Federal building which meets the pressing need of the U.S. Attorney's office to relocate. The building is within a short walking distance of both courthouses and contains enough office space to adequately accommodate the U.S. Attorney's Office. The terms of the deed of conveyance make it the prerogative of the Secretary of Labor to designate the occupants of the Employment Security Building. Transfer of title to the District of Columbia would preclude the exercising of this prerogative and would, accordingly, eliminate what appears to be the only acceptable solution to the critical space problem facing the U.S. Attorney's Office.

For these reasons, the Department of Justice recommends against the enactment of H.R. 3707, and recommends against the submission of such views to Congress which do not likewise recommend against the bill's passage.

Thank you for the opportunity to reiterate the Department's concerns on this issue.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Enclosure

UNITED STATES COURT OF APPEALS
WASHINGTON, D. C. 20001-2867

J. SKELLY WRIGHT
UNITED STATES CIRCUIT JUDGE

October 25, 1983

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The Attorney General
United States Department of Justice
Washington, D.C. 20730

Dear Mr. Attorney General:

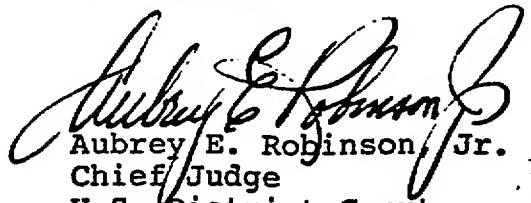
We are writing to support the request of the United States Attorney for the District of Columbia for office space outside of but within close proximity to the United States Courthouse.

Regrettably, because the need by our Courts for space in the Courthouse has increased substantially over the last several years, we must now reclaim major portions of the areas currently occupied by United States Attorney personnel. Having the United States Attorney's Office in the Courthouse has clearly contributed to the efficiency of the judicial system. However, the Courts' space needs must now take priority.

We do very much recognize the need for the United States Attorney to be located at least within close proximity to the Courthouse. Therefore, we encourage you to pursue actively a space alternative for the United States Attorney which will both enhance the efficiency of that Office and provide ready access to the United States Courts for the District of Columbia Circuit.

Sincerely,


J. Skelly Wright
Acting Chief Judge
U.S. Court of Appeals
D.C. Circuit


Aubrey E. Robinson, Jr.
Chief Judge
U.S. District Court
D.C. Circuit

xc: United States Attorney for D.C.



*Identical letter
to MARJORIE Holt.*

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Walter E. Fauntroy
Chairman, Subcommittee on Fiscal
Affairs & Health
Committee on the District of Columbia
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter offers the views of the Department of Justice on H.R. 3707, introduced on July 29, 1983, and currently scheduled for hearings before the Subcommittee on Fiscal Affairs & Health of the Committee on the District of Columbia. For the reasons detailed below, the Department recommends against passage of the proposed legislation.

If enacted, H.R. 3707 would transfer to the District of Columbia, without monetary consideration, all right, title and interest of the United States in the District of Columbia Employment Security Building. This building is located at 500 C Street, N.W., less than a block from both the U.S. Courthouse and the D.C. Courthouse.

By deed of conveyance executed on April 26, 1961, the District of Columbia conveyed to the United States in fee simple the land on which the building is now situated in order to enable the federal government to construct quarters for the U.S. Employment Service and the D.C. Unemployment Compensation Board. These quarters were "to be exclusively occupied by the aforesaid Service and Board for a period of ten years or so long as such use is determined by the Secretary of Labor of the United States or his successor in function to be necessary or advantageous. . . ." (Emphasis added.) Construction of the building was financed by the Kansas City Life Insurance Company which holds a 20-year note dated August 21, 1964. The U.S. Department of Labor, which originally made payments on the note directly, currently enables the District of Columbia to meet the obligation by providing an annual Employment Security Administration Grant to the District from which the periodic payments are deducted.^{1/} The note should be paid in its entirety by October 1984.

^{1/} This grant is made pursuant to Titles III and IV of the Social Security Act, as amended (42 U.S.C. §§ 501 *et seq.* and 1101 *et seq.*) and the Wagner - Peyster Act, as amended (29 U.S.C. § 49 *et seq.*)

The U.S. Attorney's Office for the District of Columbia -- the largest such office in the country, consisting of more than 200 attorneys and a comparable number of support staff -- currently occupies space in the U.S. Courthouse and in the D.C. Courthouse. The allocation of space in both courthouses is controlled by the Chief Judges of their respective courts.^{2/} Over the past years, the gradual expansion of the federal and D.C. courts has necessitated a conversion of office space to secured chambers and court-rooms which in turn has resulted in a commensurate reduction and/or reallocation of space available to the U.S. Attorney's Office. This development has culminated in a determination by the federal judges to convert space in the U.S. Courthouse now occupied by the Criminal and Civil Divisions of the Office by October 1, 1984, as the first step toward reclaiming all U.S. Attorney's Office space in the building; and a determination by the D.C. judges to convert space in the D.C. Courthouse now occupied by the Superior Court Operations of the Office in order to accommodate seven new judges, whose legislative authorization is expected by October 1, 1984. We expect that the entire U.S. Attorney's Office will be evicted from both courthouses within two years. Thus, the space problem confronting the U.S. Attorney's Office here is critical and necessitates expedited consideration.

If the U.S. Attorney's Office is to continue to function effectively and efficiently, it must remain proximate to both courthouses.^{3/} The daily business of the Office involves numerous court appearances as well as the transport of witnesses and of evidence (including weapons, drugs and voluminous records). Requiring Assistant U.S. Attorneys to travel any appreciable distance would compromise the valuable service that they perform to the courts and to the community. Further, in order to optimize efficient management, all divisions of the Office should be centrally located.

In our view, the Employment Security Building is the only federal building which meets the pressing need of the U.S. Attorney's Office to relocate near the U.S. and D.C. Courthouses. The building is within a short walking distance of both courthouses and contains more than 140,000 square feet of office space which would adequately accommodate all divisions of the Office. It is clear from the terms of the deed of conveyance that as long as the United States holds title to the building, the Secretary of Labor may exercise his prerogative to designate the U.S. Attorney's Office as the future occupant of the building. Transfer of title to the District of Columbia would preclude the exercise of this prerogative and would, accordingly, eliminate what would appear to be the only acceptable solution to the critical space problem facing the U.S. Attorney's Office. We therefore recommend against passage of H.R. 3707.

2/ Indeed, the United States Courthouse is the only federal courthouse in the country with respect to which the judiciary is statutorily empowered to allocate space. 40 U.S. C. § 130.

3/ This imperative is consistent with the requirement that the assignment or reassignment of federal space be "the most cost-effective solution practicable in each circumstance." 41 C.F.R. § 101-17.102(a); see also, U.S. Court Design Guide (GSA, May 1, 1979) (The United States Attorneys "form an integral part of court activities.").

The Office of Management and Budget has advised this Department that there is no objection to the submission of these comments from the standpoint of the Administration's program.

Sincerely,

ROBERT A. McCONNELL
Assistant Attorney General

FILE COPY
LEGISLATIVE AFFAIRS

98TH CONGRESS
1ST SESSION

H. R. 3707

To convey the District of Columbia Employment Security Building to the District of Columbia and to provide for the payment of a note entered into to finance the construction of such building.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1983

Mr. FAUNTROY introduced the following bill; which was referred to the Committee on the District of Columbia

A BILL

To convey the District of Columbia Employment Security Building to the District of Columbia and to provide for the payment of a note entered into to finance the construction of such building.

- 1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
- 2 *That (a) the Secretary of Labor shall convey to the District of*
- 3 *Columbia, without monetary consideration, all right, title,*
- 4 *and interest of the United States in and to the parcel of land*
- 5 *located in the District of Columbia in lot 826 of square 491*
- 6 *described in a deed from the District of Columbia to the*
- 7 *United States dated April 20, 1961, and recorded on April*

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1 26, 1961, as instrument number 11232 in liber 11589,
2 folio 135 of the District of Columbia (commonly known as the
3 location of the District of Columbia Employment Security
4 Building).

5 (b) The Secretary of Labor shall convey to the District
6 of Columbia without monetary consideration, all right, title,
7 and interest of the United States in and to any structures,
8 buildings, and improvements on the parcel of land conveyed
9 pursuant to subsection (a).

10 SEC. 2. (a)(1) The liability of the United States for the
11 payment of a note dated August 21, 1964, entered into with
12 the Kansas City Life Insurance Company to finance the con-
13 struction of the District of Columbia Employment Security
14 Building shall not be affected by this Act.

15 (2) The Secretary of Labor shall not make any payment
16 on the note described in paragraph (1) before such payment is
17 required to be made by the terms of the note unless the
18 Mayor of the District of Columbia approves making such pay-
19 ment before such date.

20 (b)(1) The Secretary of Labor shall insure that the pay-
21 ments on the note described in subsection (a)(1) are made on
22 the dates required by the terms of such note and that the
23 District of Columbia reimburses the United States for the
24 amount of each such payment.

1 (2) To insure that the payments on the note described in
2 subsection (a)(1) are made and that the District of Columbia
3 reimburses the United States for the amount of each such
4 payment, the Secretary of Labor may use funds appropriated
5 under the authorizations contained in sections 501 and
6 901(c)(1) of the Social Security Act (42 U.S.C. 701 and
7 1101(c)(1)) for the District of Columbia to reimburse the
8 United States for any such payment.

○

A New Assault on the Capital

The 600,000 residents of the District of Columbia, who already are denied voting representation in Congress, must now contend with another federal attempt to deprive them of self-government. The new issue is home rule—the right of elected district officials to change its criminal laws.

Under a proposal by the U.S. Department of Justice, the smallest amendment to the district's criminal code would have to have the approval of Congress before it could take effect.

Local officials were given no explanation for this latest attack on self-rule, although the obvious conclusion to be drawn is that the Administration believes that they are not as competent to govern themselves as are the mayors and councils of other major cities.

Apart from the right to self-determination, it strikes us that Congress has more important issues to debate than the anti-crime laws of a single city.

In recent years the trend in Congress has been toward greater self-determination for the capital; witness the majority votes in the House and Senate for a constitutional amendment that would give the

district one senator and two representatives. It now has only one non-voting member of the House.

The old argument that the federal government's right to ensure public order in the nation's capital has precedence over the civil rights of its residents is not applicable in this case or in most other cases in which Congress treats the locals as colonials.

Were circumstances to require it, the federal government has the instant authority to suspend the city's charter and to assume full control of municipal affairs.

The constitutional amendment that would grant citizens of the district full representation in Congress has little prospect of success. Only 13 of the necessary 38 state legislatures have ratified it, and it is no credit to the California Senate that it persistently refuses to join the Assembly in approving the amendment.

Citizens of Washington must wonder what they have done to deserve this new assault on their right to self-determination at the same time that their hopes of participating in the national government are all but vanishing.

The bomb, Justice, and the District

Talk about bombs and fallout. D.C.'s 1974 home-rule charter said either house on the Hill could veto a city-passed law. But last spring the Supreme Court struck down one-house legislative vetoes. The fallout from the court's bomb cast a shadow over District lawmaking. So the Barry administration proposed a solution. Let a city law stand unless the Senate, the House and the president nix it. The House agreed. The Senate was about to take it up when Justice threw its own bomb.

Justice wants to make a special case out of D.C.'s criminal laws, requiring that any District change be approved by both houses of Congress and the president before becoming law. Justice says the federal government has a special responsibility for the city's diplomats and federal workers. True, although hundreds of thousands of federal bureaucrats live and work outside D.C. Ditto for diplomats who live in the suburbs or work at the U.N. and in consular offices in other cities. All come under local and state criminal laws over which the feds have no control.

Furthermore, Mayor Barry's right in saying Congress and the president can repeal any District law regarding crime or anything else, and can put a new law on the District's books without approval by city

council and the mayor. But all this misses the point.

The question boils down to whether Congress should take the time to put aside issues like natural gas deregulation, the defense budget, or federal crime-code reform in order to pass judgment on every change, great and small, in the D.C. criminal code. Yes, if you understand that the congressional veto approach gives the city the initiative and that Congress is unlikely to take up its time in gray-area criminal legislation enacted by the city, where liberal politicians have shown an occasional inclination to try to decriminalize certain "victimless" crimes.

Remember, too, that although the District enacted tougher sentencing laws — mandatory terms for drug and gun-related crimes — than the feds have, credit goes to D.C.'s voters, who did it through initiative, over the objections of city council members and the mayor.

Justice's bomb may blow away a bit of the city's home-rule powers but will, if enacted by Congress come January, keep constitutional authority over the federal district where, on balance, it's safer — at both ends of Pennsylvania Avenue, instead of the middle, in city hall.

Memorandum



United States Attorney
District of Columbia

Subject:	Date:
<u>Chadha</u>	Dec. 7, 1983

To:

From:

John G. Roberts, Jr. J.E. diGenova
Associate Counsel to U.S. Attorney
the President

The attached is for your information
per our conversation.

Memorandum



Subject	Date
Amendments to the District of Columbia Self-Government and Governmental Reorganization Act	December 1, 1983
<hr/>	
To	From
Robert A. McConnell Assistant Attorney General Office of Legislative Affairs	Joseph E. diGenova United States Attorney
Thru:	John Logan Office of Legislative Affairs

Chadha

On November 22, 1983, this Office was asked to comment upon three letters. Those three letters were addressed to Senator Charles McC. Mathias, Chairman of the Subcommittee on Governmental Efficiency and the District of Columbia of the U.S. Senate Committee on Governmental Affairs. The letters were from Marion Barry, Jr., Mayor of the District of Columbia, David A. Clarke, Chairman of the Council of the District of Columbia, and a group of bond counsel to the city. All were dated November 17, 1983. All concur in the legal opinion first voiced by this office that the bond portion of H.R. 3932 could be enacted and thus save the pending bond issues previously authorized by the Council but left in doubt by Chadha. (See Section 1(i) of H.R. 3932).

As you know, during the stages where we became involved, our office told the Mayor and others that the bonds could be saved by exactly the language they approve of in the letters we have been asked to comment upon. Earlier in the debate, however, their position was that only H.R. 3932, as written, would suffice to get an unqualified opinion from bond counsel relative to the bond issues. Staff from both the House and Senate Committees were saying publicly through the press that the proposed limited bill to deal only with the bonds was not legally sufficient. Apparently, in the closing hours of the session they thought otherwise. The Mayor's letter, the bond counsel letter and the Chairman of the City Council's letter all agree that the saving legislation (which did not deal with the broad Chadha questions) was sufficient to secure the bond issues. It seems to me that these letters provide the Department with ample justification for its position relative to the bonds and should be held ready for use during the upcoming debate on amendments to the Home Rule Act.

I should add one cautionary note. The debate must be couched in appropriate terms. It is, in my view, a legal as well as a policy debate. The legal question posed is: What is the post-Chadha equivalent of the one house legislative veto. In only one place in the Home Rule Act did Congress retain this vehicle of the one house veto: that was in the area of review of criminal laws enacted by the Council. The equivalent legally of that is a two house resolution of approval. That is so because the purpose of the one house veto in the original Home Rule Act was to enable Congress, with its busy schedule, to stop something; not to affirmatively act upon something. If Congress and the Department wish to retain that ability to stop something then the two house resolution of approval is the only way. Under the scheme, if either house fails (i.e., one house) to approve an act of the Council in the criminal law area, then the bill fails. Thus, you have a one house veto under constitutionally approved rubrics. There would be no functional legal change in the status of this portion of the Home Rule Act. The effect is identical. That assumes, of course, that all wish to retain this degree of control. Such a course seems wise given the degree of Federal interest outlined in Bob McConnell's letter of November 15, 1983 to Chairman Roth.



U.S. Department of Justice

Office of Legislative Affairs

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

December 9, 1983

MEMORANDUM TO: Mr. Joseph Di Genova
United States Attorney
for the District of Columbia

Mr. John Roberts ✓
Office of the Counsel to the
President

Mr. Koh
Office of Legal Counsel

John
FROM: Michael W. Dolan
Deputy Assistant Attorney
General
Office of Legislative Affairs

SUBJECT: H.R. 3932

Enclosed for your review is a draft reply to Mayor Barry's letter and Councilmembers Clarke's and Rolark's letter concerning H.R. 3932. Please give either myself or John Logan a call with any comments as soon as possible.

Thank you.

Enclosure

DRAFT

Honorable David A. Clarke
Chairman
Council of the District of Columbia

Honorable Wilhelmina J. Rolark
Chairperson
Committee on the Judiciary
Council of the District of Columbia

Dear Mr. Clarke and Ms. Rolark:

As Fred Fielding indicated in his November 21st letter to you, your correspondence of November 15th has been referred to me for reply. Your letter presented your views on a draft position that the Administration was preparing on H.R. 3932, a bill seeking to correct the constitutional infirmities in the District of Columbia Self Government and Governmental Reorganization Act raised by the Supreme Court's decision in Immigration and Naturalization Service v. Chadha, 103 U.S. 2764 (1983).

Your views on this significant legislation are important to us. Indeed, it is unfortunate that we were never brought into the debate on the bill until the Chairman of the Senate committee with jurisdiction asked the Department for its views. A copy of our formal report to the Senate committee is attached. Our letter presents amendments that would satisfy our concerns. I am hopeful that we can use the Congressional inter-session recess to reach an agreement on the possible amendments to H.R. 3932.

Before closing, there is one other point I want to make in reply to your letter. I hope that you understand that our position on H.R. 3932 in no way implies a criticism of the Council of the District of Columbia or its achievements in the criminal justice area. Nor does our position reflect a diminished enthusiasm for the important principle of Home Rule. Rather, our position presents our best efforts to amend the Home Rule Act in the wake of Chadha, a decision that removed from the statute a mechanism that purported

to control the degree of discretion delegated by Congress. This unconstitutional device is no longer a compromise vehicle. It is the alternatives which our letter attempted to address and what our efforts should be directed toward.

Sincerely,

Robert A. McConnell
Assistant Attorney General



U. S. Department of Justice
Office of Legislative Affairs

DRAFT

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Marion Barry, Jr.
Mayor
District of Columbia
Washington, D.C. 20004

Dear Mr. Mayor:

As Fred Fielding indicated in his November 17th letter to you, your letter of November 15, 1983 to the President has been referred to me for reply. Your correspondence discusses your position on H.R. 3932, legislation directed to correct the constitutional infirmities in the District of Columbia Self-Government and Governmental Reorganization Act raised by the Supreme Court's decision in Immigration and Naturalization Service v. Chadha, U.S. 103 S.Ct. 2764 (1983).

The Administration appreciates your perspective on this matter and the courtesy your office has extended in advising us of your views. I hope you understand that the Department's position on this legislation was discussed in response to a request for our views from the Chairman of the Senate Committee with jurisdiction over the legislation. As part of the process whereby the Department comments on numerous bills pending before the Congress, our position was determined and reviewed as quickly as possible. It is surprising that neither the House Committee nor the District of Columbia sought the Department's views on this matter, especially since we have always expressed a substantial interest in legislation affecting criminal justice in the District of Columbia.

The issue at stake, the repeal of the legislative veto provisions in current law and determining the proper alternative, is, in a sense, one of first impression. Until the Court's decision in Chadha, the legislative veto was a much used compromise device. It purported to permit Congress to hold in check discretion which had been delegated by law. The Supreme Court's decision, of course, precludes further utilization of this mechanism. Whether delegated authority should be subject to reversal only

by enactment of a joint resolution, or whether the exercise of discretion should be implemented only by the enactment of a joint resolution, or whether some other discretion limiting device should be used, must now be resolved in a large number of statutes. Because there is no ready replacement for the legislative veto device, each statute must be carefully examined to determine the appropriate balance of competing interests involved.

Our report to the Senate Committee, a copy of which is enclosed, expresses our position on this issue as it relates to Titles 22, 23 and 24 of the District of Columbia Code. I hope that we can use the inter-session recess period to agree on amendments that we can all support.

Sincerely,

ROBERT A. McCONNELL
Assistant Attorney General



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

15 NOV 1983

Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Pursuant to your request, this letter presents the views of the Department of Justice on H.R. 3932, a bill "to amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes," as passed by the House of Representatives on October 4, 1983. We oppose the enactment of this legislation unless it is amended consistent with the discussion set forth below.

H.R. 3932 would amend the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, 87 Stat. 774 (1973), as amended, ("Act"). The legislation is in response to the Supreme Court's decision in Immigration and Naturalization Service v. Chadha, 103 S.Ct. 2764 (1983) which struck down as unconstitutional so-called "legislative veto" devices. 1/ The Act contains several such devices 2/ purporting to authorize Con-

1/ The Supreme Court has also affirmed the invalidity of two other legislative veto provisions. See Process Gas Consumers Group v. Consumers Energy Council of America, 103 S. Ct. 3556 (1983), affirming Consumers Energy Council of America v. FERC, 673 F.2d 425 (D.C. Cir. 1982), and Consumers Union, Inc. v. FTC, 691 F.2d 575 (D.C. Cir. 1982).

2/ The Act contains four provisions which may be characterized as legislative vetoes. These are:

(1) Section 303(b) provides that "an amendment to the charter . . . shall take effect only if . . . both Houses of Congress adopt a concurrent resolution . . . approving such amendment."

(2) Section 602(c)(1) provides that with respect to acts effective immediately due to emergency circumstances and acts proposing amendments to Title IV of this Act "no such act shall take effect until the end of the 30-day period . . . and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act."

gress to disapprove actions of the District of Columbia Government without complying with the constitutional requirements of legislation.

The Administration generally supports the approach of H.R. 3932, which would correct the constitutionally invalid portions of the Act by requiring Congressional action disapproving acts passed by the D.C. City Council to take the form of legislation passed by both Houses and presented to the President for approval or disapproval. In one narrow area, however, the Administration believes that it would be more consistent with Congress' prior treatment under the Act to require affirmative approval of acts passed by the D.C. City Council rather than opportunity for disapproval. We recommend that H.R. 3932 be amended to provide that City Council laws amending Titles 22, 23 and 24 of the District of Columbia Code -- which relate to criminal law, criminal procedure and prisoners-- only take effect upon passage by Congress of a joint resolution of approval. This approach will cure the constitutional infirmities pointed out by the Chadha decision, while retaining the special treatment accorded Titles 22, 23, and 24 under the existing Act.

Under the Constitution, Congress has the exclusive power to legislate for the District of Columbia. Art. I, §8, cl. 17. Pursuant to this authority Congress has enacted Titles 22, 23 and 24 of the D.C. Code. The Department of Justice, through the United States Attorney for the District of Columbia, has been vested with the prosecutive authority in the United States District Court and the District of Columbia Superior Court. D.C. Code §23-101. Indictments are sought, and prosecutions pursued in the name of the United States of America. Similarly, this Department, through the U.S. Marshal for the District of Columbia conducts the service of criminal process, provides courtroom security, transports prisoners, and returns to the District of Columbia defendants arrested in other jurisdictions and wanted for prosecution in the District of Columbia. The U.S. Marshals Service utilizes its authority under law to serve Superior Court felony subpoenas anywhere in the United States. D.C. Code §11-942(b).

Footnote 2 continued from page 1

(3) Section 602(c)(2) provides that any Act affecting Title 22, 23, or 24 of the District of Columbia Code "shall take effect . . . only if . . . one House of Congress does not adopt a resolution disapproving such act."

(4) Section 740(a) provides that either the House or the Senate may adopt a resolution terminating emergency presidential authority over the Metropolitan Police Department.

Finally, all persons convicted in the District of Columbia are committed to the custody of the Attorney General, who, through the Department's Bureau of Prisons, designates the place of confinement. D.C. Code §24-425. 3/

The Superior Court of the District of Columbia, where jurisdiction for local offenses rests, is a federal court created pursuant to Article I of the Constitution. Palmore v. United States, 411 U.S. 389, 397 (1973). The judges of the Superior Court and the Court of Appeals are appointed by the President. D.C. Code §§11-101, 11-102, 11-301, and 11-1501(a). A single jury system for grand and petit juries serves both the Superior Court and Federal District Court. A grand jury of one court may return indictments to the other. D.C. Code §§11-1902, 11-1903(a). The federal government is, accordingly, deeply interested in the prosecution of crimes under the D.C. Code, their determination before the courts, and the handling of prisoners convicted under the Code.

The federal government owns approximately 41% of all land in the District. Over 200 buildings are owned or leased by the federal government. Over 445,000 federal employees work in the Washington Metropolitan area. As a result, the District draws both the nation's citizens and those of other countries for purposes ranging from conducting business with the federal government to touring the capital. Moreover, the existence of a sizable diplomatic community underscores the federal interest in the enactment, enforcement and interpretation of the criminal laws governing the District.4/

3/ By agreement with the Government of the District of Columbia most District of Columbia prisoners are sent to the Lorton Reformatory.

4/ Our concerns in these areas do not take place in a vacuum. Presently before the D.C. Council are three bills, Bill 5-16, the Parole Act of 1983, Bill 5-244, the Prison Overcrowding Emergency Powers Act of 1983, and Bill 5-245, the District of Columbia Sentencing Improvements Act of 1983, which raise substantial concern. Bill 5-16 would reduce the minimum period of detention to 10 years and would be applicable to individuals incarcerated for such crimes as rape, murder and armed offenses. Bill 5-244 would permit, as a means of budget control, the release into the community of convicted individuals. Bill 5-245 would expand the time for granting a motion to reduce a sentence from 120 days to one year. While this Department has strongly opposed these proposals (and of course, the Council has yet to act upon them), we believe more importantly, that Congress, through the legislative process, should retain the opportunity to review the wisdom of such proposals.

Special treatment for Titles 22, 23 and 24 is consistent with the existing Act and its legislative history. Specifically, in only one area did Congress reserve to itself to veto by vote of only one House the acts of the City Council - Titles 22, 23 and 24 of the D.C. Code. Act §602(c)(2). See also H.R. Rep. No. 482, 93d Cong., 1st Sess. (1973). In fact the original bill, as passed by the House of Representatives, prohibited the soon to be established Council from legislating in the criminal law area. H.R. 9682, 93d Cong., 1st Sess., §602(a)(8) (1973). The Senate version contained no such prohibition. S. 1435, 93d Cong., 1st Sess. (1973). The conference version represented a compromise by inserting a one house veto. Pub. L. No. 93-198, §602(c)(2), 87 Stat. 774 (1973). 5/

The Supreme Court's decision in Immigration and Naturalization Service v. Chadha, 103 S. Ct. 2764 (1983), now requires this arrangement to be reworked. 6/ Our objection to H.R. 3932 is that the federal government is now asked to surrender permanently its authority in an area of its plenary responsibility. We believe that in light of the historic responsibility of the federal government for criminal law enforcement in the district, the interests of both the citizens of the District of Columbia and the Nation as a whole are better served by continuing the special treatment accorded Titles 22, 23 and 24 and maintaining the primary responsibility of the Congress and the President in this area. This responsibility can be preserved by requiring a joint resolution of approval for D.C. Council amendments to Titles 22, 23 and 24 of the District of Columbia Code. In this

(Footnote Continued from Page 3)

4/ Additionally, in 1981, the D.C. Council passed a Sexual Assault Reform Act. Among its provisions was one which lowered the age of consent for minors in statutory rape cases. Another provision would have reduced the maximum sentence for both forcible and statutory rape from life to 20 years imprisonment. The penalty for incest was reduced. The proposal also reduced the penalty for forcible rape to a 10 year maximum if the victim was physically or mentally incapable of consenting or resisting. The House of Representatives passed a resolution disapproving the proposal. H. Res. 208, 97th Cong., 1st Sess., 127 Cong. Rec. H6762 (1981).

5/ We also note that during the first two years subsequent to the date which elected members of the initial Council took office, the Council was prohibited from legislating in this area while a study of the District of Columbia Criminal Code was undertaken for the Congress. This was later extended to four years. See §602(a)(9) of the Act.

6/ See Statement of Edward C. Schmults, Deputy Attorney General, before the Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, House of Representatives (July 18, 1983).

connection, it should be noted that this proposal will give the District government more authority than it has under present law in every area except the criminal field.

It is important to be aware that the question at stake transcends the issues of the moment and that there is no inherent conflict between the District and federal government. The issues in H.R. 3932 result from the unique federal and district relationship embodied in present law. This Department values its representation of the citizens of the District of Columbia and shares their goal of ensuring that a fair, efficient, and effective criminal justice system be in place. In conclusion, we oppose enactment of H.R. 3932 unless it is amended consistent with the views expressed in this letter.^{7/}

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Robert A. McConnell

ROBERT A. McCONNELL
Assistant Attorney General

^{7/} We are sensitive to the need of the District of Columbia to have the ability to raise revenues through the municipal bond market. Section (1)(i) of H.R. 3932 is directed toward ratifying previous actions of the D.C. Council with respect to these bonds. We would suggest, however, that §(1)(i) be clarified so as not to imply that actions of the D.C. Council which never became effective, whether because they were subject to Congressional action or otherwise, are ratified.